

KEVIN WELLINGTON,) 3:10-cv-00760-HDM-VPC
)
Plaintiff,)
) ORDER
vs.)
)
JOSHUA CLARK, JOHN PEERY, SANDY)
SNIDER, JEFF WILEY,)
)
Defendants.)

The court has considered the pleadings and memoranda of the

1

1 parties and other relevant matters of record. It has made a review
2 and determination in accordance with the requirements of 28 U.S.C.
3 § 636 and applicable case law. Based on this review, and good
4 cause appearing, the court hereby accepts and adopts the report and
5 recommendation of the magistrate judge as follows:

6 The court treats defendants' motion for summary judgment (#39)
7 as an unenumerated Rule 12(b) motion to dismiss for failure to
8 exhaust administrative remedies.

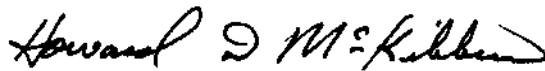
9 The motion of defendants Joshua Clark, John Peery, Sandy
10 Snider, and Jeff Wiley, to dismiss plaintiff's retaliation claim
11 for failure to exhaust (#39) is **GRANTED**.

12 Plaintiff's second amended complaint (#13) is hereby **DISMISSED**
13 **WITHOUT PREJUDICE**.

14 Plaintiff's cross-motion for summary judgment (#48) is **DENIED**
15 **AS MOOT**.

16 **IT IS SO ORDERED.**

17 DATED: This 10th day of September, 2012.

18 

19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28